

Central Administrative Tribunal, Principal Bench

Original Application No.1052 of 2002

New Delhi, this the 14th day of November, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. A.P. Nagrath, Member (A)

Shri S.K. Saxena,
S/o late Shri R.K. Saxena,
R/o G-78, Sarojini Nagar,
New Delhi

....Applicant

(By Advocate: Shri V.K. Rao)

Versus

1. Controller General of Accounts
Govt. of India,
Ministry of Finance,
Dept. of Expenditure,
Lok Nayak Bhawan,
New Delhi

2. The Principal Accounts Officer
Ministry of Urban Development,
'F' Wing, Nirman Bhavan,
New Delhi

....Respondents

(By Advocate: Shri M.M. Sudan)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

This application is a sequel to the original application No. 408/92 decided on 29.6.99. In that application, the applicant had asserted that by order of 14.10.97, 104 Junior Accounts Officers (JAOs) had been promoted out of which 92 officers were junior to him including Shri R.K. Abbi who was immediate junior to the applicant. Applicant contended that presumably he was not promoted because a minor penalty of withholding of one increment for a period of three years without cumulative effect had been imposed on him by order of 5.10.87, which was treated effective from 1.10.87 when his increment was due. This penalty was imposed while he was working as JAO. The petition had been contested and this Tribunal vide

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order dated 29.6.97 held:

"7. From the above it is seen, therefore, that the respondents themselves have corrected the penalty order passed by them on 5.10.87 by their subsequent order dated 25.5.91. The statement that disciplinary proceedings were pending against him at the time DPC met in 1987 was not correct as the penalty order had already been passed, through the same was to take effect only from 1.10.88. It is also obvious that these relevant facts were not placed before the DPC of 1987 nor was the applicant's case considered in accordance with the relevant rules to be followed by them. In these circumstances the OA is allowed with a direction to the respondents to hold a review DPC to consider the applicant's case for promotion as AAO from 1.4.87, when his juniors were so promoted. In case the review DPC finds the applicant fit for promotion, he shall be entitled to all consequential benefits in accordance with rules/instructions. No order as to costs."

2. By virtue of the present application, the applicant prays that respondents should be directed to promote him from the date his junior was promoted i.e. 1.3.91 and he should be paid arrears from the year 1987.

3. It has been asserted that respondents had given notional promotion to the applicant after the decision of the above said original application from 1.4.87, 1.10.91 and 1.10.94 as AAO, PAO and Senior Accounts Officer, respectively. In the seniority/gradation list of 1.10.2000, the applicant was placed at serial no.84 whereas as per directions of this Tribunal, he was entitled to be promoted from the date his junior Shri P.K.Dutta was promoted. The order was stated to be in contravention of the directions of this Tribunal. He claimed that he has been denied his rightful due.

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4. In the reply filed, the application has been contested. It was pointed that the applicant's matter was re-considered and he was promoted as Assistant Accounts Officer (AAO) from 1.4.87. It was pointed that this Tribunal had directed that applicant would be entitled to consequential benefits in accordance with the rules and instructions. Plea was raised that Shri C.S.Singh and Shri P.K.Dutta had been promoted on the same date. Shri Singh joined later because he wanted to be retained in the same office. He joined on 8.5.91. He was senior to Shri P.K.Dutta. Applicant was granted promotion with reference to the date of promotion of his immediate junior i.e. Shri C.S.Singh.

5. The impugned order passed in this regard reads:

"In pursuance of CGA's office order No. A-32014/ 1/ 2000/ Misc./ MF. CGA(A)/ Gr. 'B'/ Pt./2279-87 dt. 26-12-2001 the office order of this office vide No. CPAO/Estt/Promotion/AAO-PAO/1998/Vol-I dt. 7.9.2000 is modified and promotion of Shri S.K.Saxena as Pay & Accounts Officer and Sr. Accounts Officer are further ante-dated respectively from 1-10-1991 to 8-5-1991 and 1-10-1994 to 1-6-1994. The ante-dated promotions shall be on notional basis, i.e. Shri S.K. Saxena shall be entitled to seniority and notional fixation of pay in the respective grades without arrears of salary for the period between notional and actual promotions.

This issues with the approval of Controller of Accounts"

It is this order which is subject matter of controversy in the first instance.

6. We hardly need to dwell in this regard because

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the directions of the Tribunal in the earlier O.A. No.408/92 are clear and unambiguous. It clearly provide that applicant has to be promoted from 1.4.87 when his juniors were so promoted. If for some reason as pointed by the respondents, Shri Singh joined on an earlier date, that duly reflected upon the promotion of the applicant particularly when the other juniors had joined earlier. When the other juniors had joined earlier, necessarily the applicant had to get the same benefit and in this regard, therefore, the relief that applicant should be promoted from the date his juniors had been so promoted from 1.3.91, necessarily has to be allowed with consequent promotions thereafter.

7. As regards the direction that applicant has to get promotion, objection by the respondents was that this Tribunal had directed that he has to get consequential benefits in accordance with the rules and instructions. Our attention was drawn to Rule 17 of the Fundamental Rules to contend that applicant can only get the allowances attached to his tenure of a post with effect from the date when he assumes the duties of the said post. The said rule is reproduced below for the sake of facility:

"F.R.17.(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

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(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed."

8. Perusal of the above-said rule clearly reveals that it had mere application in the case where for no fault of the applicant, he was not allowed to join and deprived of his rightful claim. When this Tribunal directed that the applicant is to get consequential benefits in accordance with rules and instructions, it necessarily implies in accordance with law, rules and instructions. The respondents cannot take benefit of their own wrong and deny the consequential benefits to the applicant. When Fundamental Rule 17 does not deal with such a situation and the applicant has been denied promotion for no fault of his, which has been accorded to him above, he will be entitled to arrears in this regard.

9. For these reasons, we quash the impugned order and direct that applicant is entitled to promotion from 1.3.91 and the consequent promotions from 1.3.94. It is also directed that applicant would be entitled to the arrears of pay with effect from the date his juniors get the promotion as per the dates mentioned above. No costs.

Ampt

(A.P. Nagrath)
Member(A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

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